SINGAPORE REPORTS

JOHN TAN CHOR-YONG v. LEE CHAY TIAN

[O.C.J. (Winslow J.) November 28, 1969]

[Singapore — Suit No. 1171 of 1965]

Defamation — Slander actionable per se — Words calculated to disparage plaintiff in his office or profession — Defamation Ordinance, 1957 s. 5.

Practice and Procedure — Costs — Lengthy proceedings.

The plaintiff, an advocate and solicitor, brought an action for defamation. It was alleged that the defendant had uttered words to the plaintiff's friends in terms calculated to disparage him in his office.

Held: the words alleged to have been uttered by the defendant were clearly slanderous within the meaning of section 5 of the Defamation Ordinance, 1957 and were actionable *per se* without proof of special damage.

Observations on costs in unnecessarily lengthy proceedings.

[Editorial Note: The defendant appealed to the Court of Appeal [Singapore — Civil Appeal No. Y 30 of 1969] but subsequently filed a notice of withdrawal. The plaintiff also filed a notice of cross-appeal against the quantum of damages awarded and the learned trial judge's direction on the getting-up fee. When the case came on for hearing on April 9, 1970, the Court of Appeal (Tan Ah Tah Ag. C.J., Chua and D'Cotta JJ.) ordered the appellant to pay to the respondent the sum of $200 being his costs of the appeal. After hearing submissions on the cross-appeal, the court ordered that it be allowed and that the judgment of Winslow J. in favour of the respondent, be varied to the extent that the sum of $12,000 be substituted for the sum of $7,350 as damages, with costs of the cross-appeal to be taxed. The court further ordered that the bill of costs of the respondent in the court below be remitted to the Registrar for review and taxation in the manner indicated by it, in respect of the getting up fee.]

Case referred to:-

(1) *Dauncey* v. *Holloway* [1901] 2 K.B. 447.

CIVIL SUIT.

K. S. Chung for the plaintiff.

N. C. Goho for the defendant.

Cur. Adv. Vult.

Winslow J.: In the normal way I would have written a considerably longer judgment than the one I am now about to deliver. The various aspects both factual and legal which were presented to me in the course of a protracted trial, which commenced on 24th June 1968 and came to an end on 17th July this year do not, on further reflection, necessitate such a course because the essential issues of fact, despite detailed and exhaustive presentation and pursuit over 25 working days, are relatively simple and the law relating thereto reasonably clear.

The plaintiff is a member of the Bar who is now of about 8 years' standing. His complaint is that the words hereinafter set out were uttered to his friends and his clients in terms calculated to disparage him in his office and he also contends that not only did these words lower him in the esteem of mankind generally but also tended to injure him in his profession.

Both the plaintiff and the defendant had been friends from about 1962 until 1964 when the plaintiff prevailed upon the defendant to let him have the tenancy of the front portion of the first floor of the premises known as 61A Chulia Street, of which the defendant's wife was the landlord. In fact, the wife of the defendant is more or less the defendant's nominee. To cut a long story short, that friendship came to an end towards the latter part of 1964. The defendant and the plaintiff who was his solicitor in some matters had been associated in a number of transactions and enterprises, into the details of which I think it is unnecessary here to probe. Suffice it to say that disagreement and dissatisfaction took place on the part of the defendant who desired to terminate his connection with these transactions and to dissociate himself from them entirely. Matters came to a head when the defendant refused to be involved in these enterprises and withdrew from further association with the plaintiff therein.

It is alleged by the plaintiff that the defendant then started a campaign designed to get rid of the plaintiff from the premises. The plaintiff, of course, had spent some money in renovating the premises to make them suitable for a lawyer's practice. He had had air-conditioners put in, the walls white-washed and so on and had spent in all something like $7,000 in renovations.

It is quite clear from the evidence which is overwhelmingly in favour of the plaintiff that the defendant started a nuisance campaign to give as much trouble as possible to the plaintiff in order to induce him to leave the premises as well as to deprive him of clients both present and potential. There is little doubt that the defendant defied the plaintiff to do what he could to extricate himself from his unhappy position.

The alleged slanderous statements uttered by the defendant are set out in paragraphs 4 and 5 of the statement of claim as follows: —

"4(a) (Why) is that lawyer upstairs showing off. He can't even pay me three months' rent.

"4(b) The lawyer upstairs owes me 3 months' rent and still can't pay up. He thinks that (because) he's a lawyer I should be afraid of him.

"5(a) That lawyer upstairs owes me 5 months' rent and I intend to tell all his clients about it.

"5(b) What kind of lawyer is he; he owes me 7 months' rent and cannot pay."

Four witnesses were called on behalf of the plaintiff to testify to the fact that the defendant uttered these words to them separately and on the various dates and at the times set out as follows: —

Re. 4(a) Yeap Pik Kiong 7th April, 1965 at about 1.30 p.m.
Re. 4(b) Ho Yuan Wang, 9th April, 1965 at about 1.30 p.m.
Re. 5(a) Sng Song Teck, 7th April, 1965 at about 3.00 p.m.
Re. 5(b) Tan Hai Tong, 6th April, 1965 at about 11.00 a.m.

These witnesses gave their evidence reasonably well despite lengthy cross-examination out of which they emerged with flying colours and I accept them as witnesses of truth. I am quite satisfied from the evidence as a whole, including the evidence adduced by the defendant as to his *alibi* for these dates, that these words were in fact uttered by the defendant to these witnesses concerning the plaintiff at about the times and on the

dates set out earlier in his office on the ground floor of 61 Chulia Street.

The only question that arises is whether these words can be said to have been calculated to disparage the plaintiff in his office as a lawyer. Section 5 of the Malayan Defamation Ordinance of 1957 which applies in Singapore is the equivalent of section 2 of the Defamation Act, 1952 of England and it is significant that, unlike the position previously, it is now unnecessary to allege or prove special damage whether or not the words are spoken of people like the plaintiff in the way of his office or profession. In short, it is unnecessary to allege or prove special damage even if the words are not spoken of the plaintiff so as to affect him in his profession. Thus it will now be actionable *per se* to impute insolvency to a solicitor. Cases like *Dauncey* v. *Holloway*,[1] where words were uttered to the effect that a solicitor had lost a considerable sum of money, would today be decided differently. In that case in 1901 it was held that these words did not impute any want of capacity in him as a solicitor.

In my judgment the words alleged to have been uttered by the defendant about the plaintiff are clearly slanderous within the meaning of section 5 of the 1957 Ordinance. I am even prepared to hold that these words were published of him in connection with his profession as a practising advocate and solicitor and were slanderous of him in his capacity as such and imputed unfitness or incapacity on his part to conduct his profession.

I also find on the evidence as a whole that the defendant was responsible for mounting a nuisance campaign against the plaintiff from the latter part of 1964, right through 1965, which campaign reached its peak around the time when the slanders were published, i.e., in April, 1965. I accept the evidence of the defendant's former clerk, P.W. 11, Ong Khoon Kian on these matters and I reject the monstrous suggestion that the plaintiff committed all the acts of nuisance complained of in order to make the case stronger against the defendant in respect of these slanders. I therefore find malice amply proved. This of course will go towards enhancement of damages.

It follows from what I have said so far that I reject the defence of *alibi* for the period 5th to 10th April, 1965, both dates inclusive. The important dates are of course 6th, 7th and 9th April and I am satisfied on all the evidence that the defendant was in his office on the ground floor of 61 Chulia Street at the times when the witnesses, to whom I have referred earlier, passed through his office on their way either upstairs to the plaintiff's office or on their way out. His witnesses were wholly unconvincing and unreliable if not completely discredited.

Some of them contradicted themselves constantly and, when taken to task about the accuracy of their support of the *alibi* defence, reluctantly agreed that they only remembered that the defendant was present in Pontian at his estate or at some of the other places in the vicinity at the relevant times and dates because they were reminded about this by the defendant after the trial began. One of them said that if he had not been so reminded he would not have remembered that the defendant was present in Pontian. This was D.W.5. The biggest bundle of contradictions was D.W.7. As for D.W.6 (Abdulla b. Suradi) he was useless. As for the rest of the witnesses as to the *alibi* the record speaks for itself.

It is also significant that the *alibi* seems to have occurred to the defendant only on or after 24th May 1968, some 3 years later, after he had already been to five previous solicitors to none of whom he appears to have communicated this defence although the writ herein was issued in July 1965 and the defence filed in August of that year. I am quite satisfied that the *alibi* has been fabricated at the last moment. This trial commenced as I have said on 24th June 1968 and it was only in April, 1969 that the court heard for the first time that the defendant had spent the daylight hours from about 7.00 a.m. to about 4.30 or 5.00 p.m. each day from 5th April to 9th April, 1965 in Johore or, to be more precise, in Pontian.

The *alibi* accordingly stinks to high heaven. Furthermore, the defendant's own diary (Ex. D1) for the relevant period contains no entry in it indicating his departure from Singapore on those dates nor did the Causeway check-point Police officers have any record that his motor car No. SL 2824 passed through to Johore on any of those dates.

One witness for the defence, D.W.6, Abdulla b. Suradi, was clearly proved to be a liar. He said he accompanied the defendant everyday from 6th April onwards till the 9th to Pontian because he had obtained leave from the school where he worked as a care-taker. The Principal of this school utterly refuted this by her evidence which was adduced in rebuttal. She said that this witness was not on leave from 6th to 9th April, 1965, inclusive and produced the school attendance register for the staff to prove it and also stated quite categorically that if someone were missing though marked as present, she would know and she was quite certain that he was not missing. It is also significant that most of the witnesses for the defence relating to his presence in Pontian described the defendant's motor car as being blue when in fact it was, according to the records of the Registrar of Vehicles, foggy silver and never blue.

It only now remains for me to assess the quantum of damages which I should award. Having considered all the aggravating circumstances carefully, I have little doubt that the plaintiff has suffered not only injury to his reputation but also to his own feelings. In the absence of the aggravating acts of nuisance which clearly reveal spite of an extraordinary *quasi-puerile* character on the defendant's part one would have thought that if the slanderous words had been uttered only on one isolated occasion this would not normally have caused many professional men like the plaintiff to feel so aggrieved as to institute proceedings for slander. Here, however, the slanderous words were repeated persistently to the friends and clients or potential clients of the plaintiff who were total strangers to the defendant without any justification whatsoever. He even took pains to point out to one of these witnesses, P.W.10 Sng Song Teck, the litter that he had thrown

around in order to embarrass the plaintiff and he even incited this witness to create a scene in the plaintiff's office in front of his other clients — to which of course the witness very properly turned a deaf ear.

On the whole what the plaintiff really needs is, I think, not a large fortune by way of compensation as damages but some reasonable sum which will serve to vindicate his position and assuage his wounded feelings. I think a sum of $7,350 (the equivalent of £1000 sterling) in all should be adequate particularly as the costs payable by the defendant will be quite heavy having regard to the length of the trial. I was almost inclined at one stage to reduce the costs payable, whoever won, but I do not propose to do so. I should like to make it clear that, in future, counsel, however successful they may be, will run the risk of reduced costs if they do not keep within a reasonable range of the estimated number of days for which they asked. Here I think that the plaintiff and his counsel were less to blame for the length of the trial although the evidence relating to aggravation could have been considerably shortened.

The moral to be derived from these proceedings, and which the profession would perhaps be wise to take to heart, appears to be as follows: —

Never place yourself, as a professional man on whom your client depends for professional legal advice, in a situation of deep obligation to that client to such an extent that the value and purpose of the legal advice and your proper relationship with him as solicitor and client and the services you render are likely to be jeopardized by your involvement with him in extraneous private dealings and transactions which you can reasonably avoid.

For the benefit of the Registrar when taxing costs I would indicate that the getting-up fee should not exceed $2,500 because, as I have already said, the law is reasonably clear despite the researches in which both counsel appear to have indulged. I should not be taken as fixing the getting-up fee at this figure or of binding the Registrar. I am merely indicating what the maximum amount, in my view, should be. Counsel are of course at liberty to convince the Registrar otherwise.

Judgment will accordingly be entered for the plaintiff in the sum of $7,350 with costs.

Judgment for the plaintiff

Solicitors: *Chung & Co.; S. C. Goho & Co.*

RE ALKAFFS' SETTLEMENT

[O.C.J. (Choor Singh J.) March 1, 1971]

[Singapore — Originating Summons No. 41 of 1970]

Wills and Trusts — Settlement — Construction — Grandchildren — Meaning of.

This originating summons was taken out to determine certain questions relating to a settlement dated the 21st December, 1888. The relevant provision with regard to the distribution of the capital estate reads as follows: "Upon trust nevertheless at the expiration of the period of 21 years ... for such person or persons then living as is or are the grandchild or grandchildren of the settlors or either of them or the said Syed Abdullah bin Abdulrahman Alkaff deceased and if more than one as tenants-in-common in the proportion of 2 shares to every grandson and 1 share to every granddaughter or in the event of a total failure of issue of the settlors and the said Syed Abdullah bin Abdulrahman Alkaff then for such person or persons as would then be entitled thereto according to Mohammedan Law were the survivor of the settlors then to die possessed of the said trust premises intestate and in the shares and proportions in which according to the same law such persons (if more than one) would be so entitled as aforesaid".

The questions which arose for construction were: —

(1) Whether upon the true construction of the aforesaid settlement the capital estate is distributable on the arrival of the date of its distribution (a) only among such person or persons then living as is or are the grandchild or grandchildren of the settlors and their brother Syed Abdullah or (b) among such person or persons then living as is or are the issue however remote of these three persons.

(2) Should the court be of the opinion that the capital estate is distributable among such person or persons as is or are the issue however remote of the settlors and their brother Syed Abdullah and should any such issue have children living at the date of distribution whether: (a) such issue shall share in the distribution of the capital estate to the exclusion of his or her children, if any; or (b) both such issue and his or her children shall share in the distribution as tenants-in-common with other issue.

Held: (1) the disposition of the capital estate consists of two gifts namely (i) the original gift to the person or persons answering the description of "grandchild" or "grandchildren" and (ii) a substitutional gift to other remoter descendants in case there are no such grandchild or grandchildren living at the date of distribution; that the court must look at the operative and effective part of the clause containing the original gift to see what words are used, and if clear and unambiguous words are used then the court must give effect to those words;

(2) the words "grandchild" and "grandchildren" are plain, precise and unambiguous words which ought to be given their ordinary meaning and that the capital estate is distributable only among such person or persons then living as is or are the grandchild or grandchildren of the settlors and their brother Syed Abdullah;

(3) the second question, therefore, does not arise for consideration.

Cases referred to:-

(1) *In re Alkaff's Settlements* [1928] S.S.L.R. 188.

(2) *Orford (Earl)* v. *Churchill* (1814) 35 E.R. 401.

(3) *In re Rawlinson* [1909] 2 Ch. 36.

ORIGINATING SUMMONS.

M. Karthigesu for the plaintiff.

Eric Choa for the first defendant.

Y. R. Jumabhoy and *Kirpal Singh* for the second defendants.

Cur. Adv. Vult.

Choor Singh J.: This is an application made by way of originating summons asking for the determination of certain questions arising on the construction of the settlement of Syed Mohamed bin Abdulrahman Alkaff and Syed Shaik bin Abdulrahman Alkaff dated the 21st December 1888.

The settlors conveyed a number of freehold and leasehold properties in Singapore to trustees to hold upon trust for a period of twenty-seven named lives